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SUPREME COURT OF ARKANSAS

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. 82-5147

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CHARLES LAVERNE SINGLETON,

Petitioner

vs.

STATE OF ARKANSAS,

Respondent

---

PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF ARKANSAS

---

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NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1981

CHARLES LAVERNE SINGLETON

PETITIONER

VS.

STATE OF ARKANSAS

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF ARKANSAS

Petitioner, Charles Laverne Singleton, a prisoner under sentence of death, petitions for a writ of certiorari to review the denial, by the Supreme Court of Arkansas, of his petition for post-conviction relief from his conviction and sentence of death for the offense of capital murder.

QUESTION PRESENTED

Whether a capital defendant's Fifth, Sixth, Eighth, and Fourteenth Amendment rights are violated when a state Supreme Court refuses to allow him access to post-conviction relief to litigate effectiveness of counsel and other issues, when the defendant has not previously had that opportunity, when a forum is available by statute, and when he has made a prima facie showing of deprivation of rights, including effective assistance of counsel.

TABLE OF CONTENTS

QUESTION PRESENTED.....1  
TABLE OF AUTHORITIES.....iii  
OPINION BELOW.....1  
CONSTITUTIONAL PROVISIONS AND STATUTES  
INVOLVED.....1  
STATEMENT OF THE CASE.....5  
REASON FOR GRANTING THE WRIT.....8

THE STATE'S DENIAL TO PETITIONER  
OF ACCESS TO A FORUM FOR POST-  
CONVICTION RELIEF, WHEN A FORUM IS  
AVAILABLE AND OTHER UNDER CIRCUM-  
STANCES, VIOLATES HIS RIGHTS UNDER  
THE FIFTH, SIXTH, EIGHTH, AND FOUR-  
TEENTH AMENDMENTS AND VITIATES PUBLIC  
POLICY.

CONCLUSION.....14  
CERTIFICATE OF SERVICE.....14  
APPENDIX.....

- A. SINGLETON V. STATE, 274 Ark. 126, 623 S.W. 2d 180 (1984)  
B. PETITION FOR PERMISSION TO PROCEED UNDER RULE 37  
C. RESPONSE BY STATE OF ARKANSAS TO PETITION  
D. ORDER OF ARKANSAS SUPREME COURT DENYING  
RULE 37 PETITION PERMISSION TO PROCEED  
E. ORDER OF ARKANSAS SUPREME COURT DENYING  
STAY OF EXECUTION (Stay granted later  
by U.S. District Court).

## TABLE OF AUTHORITIES

### CASES

<u>Collins v. State</u> , 271 Ark. 825, 611 S.W. 2d 182 (1981)...	11
<u>Engel v. Isaac</u> , ___ U.S. ___, 71 L.Ed. 2d 783 (1982).....	8
<u>Gardner v. Florida</u> , 430 U.S. 349, 51 L.ed. 2d 393 (1977).	9
<u>Gregg v. Georgia</u> , 429 U.S. 1301, 50 L.Ed. 2d 30 (1976)...	9
<u>Hilliard v. State</u> , 258 Ark. 81,531 S.W. 2d 463 (1977)....	9
<u>Hulsey v. State</u> , 268 Ark. 312, 595 S.W. 2d 934 (1980)....	11
<u>Miller v. State</u> , 273 Ark. 508, 621 S.W. 2d 482 (1981)....	11
<u>Neal v. State</u> , 270 Ark. 441, 605 S.W. 2d 421 (1980) 274 Ark. 217, 623 S.W. 2d 191 (1981).....	11
<u>Pickens v. State</u> , unpublished per curiam 11/3/80.....	11
<u>Ruiz &amp; Denton v. State</u> , 275 Ark. 410, 630 S.W. 2d 44(1982).	11
<u>Singleton v. State</u> , 274 Ark. 126, 623 S.W. 2d 180 (1981)..	1
<u>Wainwright v. Sykes</u> , 433 U.S. 72, 53 L.Ed. 2d 594(1977)...	13
<u>Witherspoon v. Illinois</u> , 391 U.S. 510 (1968).....	12
<u>Woodard v. State</u> , 273 Ark. 235, 617 S.W. 2d 861(1981)....	11
<u>Swindler v. State</u> , 272 Ark. 340, 617 S.W. 2d 1 (1981)....	11
<u>Zant v. Stephens</u> , 456 U.S. ___, 72 L.Ed.2d 222(1982)....	11

### STATUTES

28 U.S.C. 1257(3).....	1
Ark. Stat. Ann. 41-1501(1)(a).....	2
Rule 37, Arkansas Rules of Criminal Procedure (Repl. 1977) as amended.....	2 et seq

### CONSTITUTIONAL PROVISIONS

Fifth Amendment, United States Constitution.....	1 et seq.
Sixth Amendment.....	1 et seq.
Eighth Amendment.....	2 et seq.
Fourteenth Amendment.....	2 et seq.



### OPINION BELOW

The original opinion of the Supreme Court of Arkansas, reproduced in the Appendix, is reported as Singleton v. State, 274 Ark. 126, 623 S.W. 2d 180 (1981). The denial of the Rule 37 Petition, from which this petition for writ of certiorari is brought, is not reported, but the official documents issued by the Supreme Court of Arkansas are also reproduced in the Appendix.

### JURISDICTION

The decision of the Supreme Court of Arkansas denying the Rule 37 Petition was issued on June 1, 1982. This Court's jurisdiction is invoked under 28 U.S.C. 1257(3), with Petitioner asserting a deprivation of rights secured by the Constitution of the United States.

### CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

#### Fifth Amendment, United States Constitution:

No person shall be...deprived of life, liberty, or property without due process of law;...

#### Sixth Amendment, United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed....and to have the assistance of counsel for his defense.

**Eighth Amendment, United States Constitution:**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Fourteenth Amendment, United States Constitution:**

...(N)or shall any state deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

**Ark. Stat. Ann. 41-1501(1):**

A person commits capital murder if:  
(a) acting alone or with one or more other persons he commits or attempts to commit...robbery...and in the course of and in furtherance of the felony he or an accomplice causes the death of any person under circumstances manifesting an extreme indifference to the value of human life.

**RULE 37, ARKANSAS RULES OF CRIMINAL PROCEDURE:**

**RULE 37.1 Scope of Remedy:**

A prisoner, in custody under sentence of a circuit court and whose case was not appealed to the Supreme Court, claiming a right to be released, or to have a new trial, or to have the original sentence modified on the ground:

- (a) that the sentence was imposed in violation of the Constitution and laws of the United States or this state; or
- (b) that the court imposing the sentence was without jurisdiction to do so; or
- (c) that the sentence was in excess of the maximum authorized by law; or
- (d) that the sentence is otherwise subject to collateral attack; may file a verified motion at any time in the court which imposed the sentence, praying that the sentence be vacated or corrected.

**RULE 37.2 Commencement of Proceedings; Pleadings; Permission of Supreme Court Following Appeal:**

(a) If the conviction in the original case was appealed to the Supreme Court, then no proceedings under this rule shall be entertained by the circuit court without prior permission of the Supreme Court.

(b) All grounds for relief available to a petitioner under this rule must be raised in his original petition unless the petition was denied without prejudice. Any ground not so raised or any ground finally adjudicated or intelligently and understandingly waived in the proceedings which resulted in the conviction and sentence, or in any other proceeding that the prisoner may have taken to secure relief from his conviction or sentence, may not be the basis for a subsequent petition.

(c) A petition claiming relief under this rule must be filed in circuit court or, if prior permission to proceed is necessary as indicated in paragraph (a) in the Supreme Court within three (3) years of the date of commitment, unless the ground for relief would render the judgment of conviction absolutely void.

(d) The decision of the court in any proceeding under this rule shall be final when the judgment is rendered. No motion for rehearing shall be considered.

(e) Before the court acts upon a petition filed under this rule, the petition may be amended with leave of the court.

**RULE 37.3 Nature of Proceedings; Summary Disposition; Appointment of Counsel; Evidentiary Hearings; Presence of Petitioner.**

(a) If the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the trial court shall make written findings to that effect, specifying any parts of the files or record that are relied upon to sustain the court's findings.

(b) If the original motion, or a motion to take an appeal from the court's findings under subsection (a) hereof, should allege that the prisoner is unable to pay the cost of the proceedings, or to employ counsel and if the court is satisfied that this allegation is true, the circuit court shall appoint counsel for the prisoner for hearing in the circuit court and for appeal to the Supreme Court.

(c) When a motion is filed in the circuit court mentioned in Rule 37.1 and the court does not dispose of the motion under subsection (a) hereof, the court shall cause notice of the filing thereof to be served on the prosecuting attorney; and on the motion the court shall grant a prompt hearing with proceedings reported. Objections to the court's rulings are required, but exceptions need not be saved. The court shall determine the issues and make written findings of fact and conclusions of law with respect thereto. If the prisoner desires to be present at the hearing for the taking of testimony, the court shall order his presence.

**RULE 37.4 Relief:**

If the circuit court finds that for any reason the prisoner is entitled to any relief, then the circuit court may set aside the original judgment, discharge the prisoner, resentence him, grant a new trial, or otherwise correct the sentence, as may appear appropriate in the proceedings.

**RULE 37.5 Attorney's Fees:**

The circuit court may award fees to attorneys representing indigent persons under this rule, as provided by Ark. Stat. Ann. § 43-2415 et seq. (Repl. 1964).



STATEMENT OF THE CASE

On October 30, 1979, Petitioner, a black man then nineteen years of age, was convicted of capital murder and aggravated robbery in the Circuit Court of Ashley County, Arkansas, in violation of Ark. Stats. Ann. 41-1501(1)(a) and 41-2102 (Repl. 1977) respectively. He was sentenced to death by electrocution on the capital murder conviction and to life imprisonment on the aggravated robbery.

The Arkansas Supreme Court, in an opinion rendered October 26, 1981, affirmed Petitioner's conviction and sentence for capital murder, but vacated the robbery conviction on double jeopardy grounds. Singleton v. State, 274 Ark. 126, 623 S.W. 2d 180 (1981). The court also relieved Petitioner's appointed counsel, who has served both at trial and on appeal.

Petitioner, through present counsel serving pro bono publico, obtained a stay of execution of a January 8, 1982 execution date and petitioned the United States Supreme Court for a writ of certiorari. That petition was eventually denied by the Court. Singleton v. Arkansas, \_\_\_\_\_ U. S. \_\_\_\_\_ (1982).

On May 5, 1982, Governor Frank White of Arkansas set June 4, 1982 as an execution date for Petitioner. On May 25, 1982, Petitioner filed a Petition for Stay of Execution and a Petition for Permission to Proceed Under Rule 37 of the Arkansas Rules of Criminal Procedure, hereafter referred to as "Rule 37 Petition".

The State waived response on the Petition for Stay of Execution and asked for additional time to respond to the Rule 37 Petition. Despite that, the Arkansas Supreme Court denied both petitions without comment on June 1, 1982. All these documents are attached in the Appendix hereto.

Later that same day, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody and an Application for Stay of Execution in the United States District Court for the Eastern District of Arkansas. (Case No. PB-C-82-165). The Hon. G. Thomas Eisele granted the stay of execution and noted Petitioner's intentions to seek certiorari from the denial of the Rule 37 Petition before litigating the federal habeas issues. The federal habeas action is currently in abeyance.

Rule 37 of the Arkansas Rules of Criminal Procedure defines the process for seeking and obtaining post-conviction relief in Arkansas. Rule 37.2 requires a litigant whose case had been appealed to the Supreme Court to obtain prior permission from the Court before an evidentiary record can be made in the trial court pursuant to Rules 37.1 and 37.3. In his Rule 37 Petition, Petitioner sought an evidentiary hearing and relief on a number of grounds, including but not limited to ineffectiveness of counsel at all stages of the proceedings, prejudicial methods of jury selection, racial exclusion of potential jurors, and other grounds.

From the denial of his Petition for Permission  
to Proceed Under Rule 37, Petitioner brings this petition  
for writ of certiorari.

REASON FOR GRANTING THE WRIT

THE STATE'S DENIAL TO PETITIONER OF ACCESS TO A FORUM FOR POST-CONVICTION RELIEF, WHEN A FORUM IS AVAILABLE AND UNDER OTHER CIRCUMSTANCES, VIOLATES HIS RIGHTS UNDER THE FIFTH SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS AND VITIATES PUBLIC POLICY.

This case affords the Court an opportunity to delineate the circumstances, if any, in which a state is obligated to provide a forum for post-conviction relief.

This issue is especially timely, in light of this Court's policy, most recently enunciated in Engel v. Isaac, \_\_\_ U.S. \_\_\_, 71 L.Ed. 2d 783, 102 S.Ct. \_\_\_ (1982), discouraging federal habeas corpus in favor of resolution of issues on the state level. As the Statement of the Case, supra, indicates, the Supreme Court of Arkansas has denied Petitioner access to a forum in which to litigate and develop an evidentiary record on the issues appropriate to collateral attack.

Petitioner submits that, even if the Court is unwilling to find a universally applicable right to post-conviction relief, the salient factors of Petitioner's case evince that the right--or obligation of the state, does indeed exist in certain circumstances.

Petitioner is under sentence of death. He was represented by the same appointed counsel at trial and direct appeal, and has not had an opportunity to litigate effectiveness of counsel. The state provides a forum under Rule 37 in which these matters may be developed, but access was denied Petitioner, without a hearing, before the state responded on the merits of the petition, and without any explanation of why a hearing was denied, in deviation from prior Arkansas procedure in collateral



attacks in capital cases. And, Petitioner has made a prima facie showing of ineffectiveness of counsel (and other matters alleged as well), certainly to the extent at which a hearing would be necessary.

This Court recognizes that the death penalty is different in kind, rather than merely in degree, from other penalties that may be assessed. Gregg v. Georgia, 429 U.S. 1301, 50 L.Ed. 2d 30, 96, S.Ct. 3235 (1976); Gardner v. Florida, 430 U.S. 349, 51 L.Ed. 2d 393, 97 S.Ct. 1197 (1977). This Court has required a higher degree of scrutiny in capital cases, as a safeguard against arbitrary and capricious application of the death penalty. Gardner, *supra*. The condemned litigant must be given an opportunity to develop all meritorious issues, and in order to protect his rights of due process, equal protection and uncruel punishment, the states must provide access to an existing avenue for this scrutiny.

The issue of effectiveness of counsel is merely one of the issues sought for review under Rule 37. His appointed counsel, who served at trial and direct appeal, was relieved upon affirmance of the conviction. Arkansas procedure does not permit litigation of the effectiveness issue on direct appeal. One of the most often cited cases for that proposition is Hilliard v. State, 259 Ark. 81, 531 S.W. 2d 463 (1977), which includes the following language:

Appellant's concluding assignment of error is that inadequate representation was afforded him by his retained counsel at the trial. However, this

issue was not raised in the trial court and we will not consider it here since the trial court has not had an opportunity to pass upon the appellant's contention.

No motion for new trial was filed and the trial court is in a better position to assess the quality of legal representation through a motion for new trial or a motion for post-conviction relief than we are on appellate review. Under either method the circuit court then has the opportunity to consider many facets of the cause that by necessity are denied us on appeal. An evidentiary hearing of this caliber would better equip us on review to examine in detail the sufficiency of the record below... If the accused did not have adequate opportunity to raise the issue in the trial court before appeal, he can raise the question by motion for post-conviction relief.

Petitioner submits that his Sixth Amendment right to counsel means a right to effective counsel.

Rule 37 is in five segments. Rule 37.1 permits release, new trial or modification of sentence on grounds of violation of the Constitution or laws of the United States or of the state, or that the trial court was without jurisdiction, or that the sentence was in excess of the authorized maximum, or that it is otherwise subject to collateral attack. Rule 37.2, however, requires prior permission from the Supreme Court before relief may be sought on a case already appealed. Rule 37.3 deals with the nature of the proceedings in the trial court and the procedural requisites once there. In the case at bar, Petitioner was denied the permission to proceed required under Rule 37.2 before a hearing can be held under Rule 37.3.

A fact that clearly distinguishes Petitioner's case from all other capital defendants in Arkansas

is that all others under sentence of death, post-Furman, whose cases had reached this stage of collateral attack were at least provided with an opinion of the court explaining why the petition for permission to proceed under Rule 37 was denied. Hulsey v. State, 268 Ark. 312, 595 S.W. 2d 934 (1980); Neal v. State, 270 Ark. 441, 605 S.W. 2d 421 (1980), death sentence vacated 274 Ark. 217, 623 S.W. 2d 191 (1981); Collins v. State, 271 Ark. 825, 611 S.W. 2d 182 (1981); Swindler v. State, 272 Ark. 340, 617 S.W. 2d 1 (1981); Woodard v. State, 273 Ark. 235, 617 S.W. 2d 861 (1981); Miller v. State, 273 Ark. 508, 621 S.W. 2d 482 (1981); Ruiz and Denton v. State, 275 Ark. 410, 630 S.W. 2d 44 (1982); and Pickens v. State, unpublished per curiam opinion 11/3/80. This deviation, without any explanation, denied Petitioner due process and equal protection of the laws.

This Court recently required a state court to explain the basis for its ruling in a capital case. Zant v. Stephens, 456 U.S. \_\_\_, 72 L.Ed. 2d 222, 102 S.Ct. 1856 (1982). Petitioner submits that the reasoning of that opinion should be extended, in light of the facts of the case at bar, that if this Court will not require a state to grant a hearing, that at least require the state to explain the grounds on which it denied Petitioner access, when it has provided at least an explanation to all other litigants similarly situated. Only with such an explanation may this Court review that denial.

Petitioner submits that indeed he demonstrated in his Petition the need for a post-conviction hearing.

The entire Petition has been reproduced in the Appendix, but a summary is appropriate for purposes of example: failure of defense counsel to complete the procedural requisites for making an appellate record (a point noted by the Supreme Court on direct appeal); failure to conduct an adequate voir dire of several witnesses and to challenge them for cause, including a person related to a murder victim, an acquaintance of the victim in this case and a person who indicated that he would make the defendant prove his innocence; wrongly assenting to a challenge by the state for cause under Witherspoon v. Illinois, 391 U.S. 510 (1968) of a person not disqualifiable for cause under terms of that decision; failure to identify objectionable jurors in the trial record; failure to make an adequate record on racial exclusion of potential jurors; proposition of inconsistent defenses at the guilt phase of the trial; failure to seek a second psychiatric evaluation of Petitioner's mental condition; failure to prepare for the penalty phase; failure to present evidence at the penalty phase despite its availability; giving an entirely improper closing argument in the penalty phase; selection of the jury venire and the panel present in the courthouse in an improper manner. There were, of course, other issues propounded on which a hearing would be appropriate, and certain other matters involving questions of law.

Petitioner submits that he made a prima facie showing of ineffectiveness of counsel, particularly in the voir dire and penalty phases, based upon citation of matters already in the record. Certainly enough showing was made to permit him to develop the record for appellate review.



Petitioner is entitled to due process through the Fifth and Fourteenth Amendments, effective assistance of counsel through the Sixth and Fourteenth, protection against cruel and unusual punishment through the Eighth and Fourteenth, and equal protection of the laws through the Fourteenth.

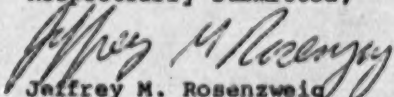
Petitioner submits that to deny a capital defendant access to a forum to litigate important issues, including but not limited to effectiveness of counsel, and to deny him an explanation of why the access is denied, when a forum is available under state procedures and he has made a showing of entitlement, is to deny him each of those rights designated above. Particularly in light of this Court's policy with regard to federal habeas corpus and its concomitant encouragement of state remedies, permission of a development such as in the instant case will have a severe and adverse impact upon those policies which this Court has sought to advance. It is to the benefit of all parties to develop records on collateral relief issues at the earliest possible juncture in state court, in order to avoid intrusion by the federal judiciary.

Wainwright v. Sykes, 433 U.S. 72, 53 L.Ed. 2d 594, 97 S.Ct. 2497 (1977).

CONCLUSION

The petition for writ of certiorari should to the Supreme Court of Arkansas should be granted and the holding of that court should be reversed. This Court should at this matter for oral argument on the issues outlined above.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Jeffrey M. Rosenzweig, attorney for Petitioner Charles Laverne Singleton SK 874, do hereby certify that a true and correct copy of the foregoing Petition for Writ of Certiorari and Appendix has been served on opposing counsel by mailing a copy of same this 29 day of July, 1982 to Victra Fewell, Assistant Attorney General, Justice Building, State Capitol Grounds, Little Rock, Ark. 72201 by first class mail, postage prepaid.

